

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of

**Joint Application by SBC Communications Inc.,
Southwestern Bell Telephone Company,
and Southwestern Bell Communications Services,
Inc. d/b/a Southwestern Bell Long Distance for
Provision of In-Region, InterLATA Services in
Arkansas and Missouri**

CC Docket No. 01-194

**SUPPLEMENTAL COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (ASCENT”), through undersigned counsel and pursuant to Public Notice, DA 01-1486 (released June 21, 2001), hereby submits the following comments supplementing its earlier-filed opposition to the joint application ("Application") filed by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively "SWBT") for authority to originate interLATA traffic in the States of Arkansas and Missouri, pursuant to Section 271 of the Communications Act of 1934 (the “Act”), as amended by the Telecommunications Act of 1996.¹ ASCENT will demonstrate herein that actions taken by SWBT subsequent to the filing of its Application confirm ASCENT’s assessment that the carrier has not fully complied with the resale component of the 14-point “competitive checklist” set forth in

¹ 47 U.S.C. § 271.

Section 271(c)(2)(B) of the Act.² ASCENT, accordingly, once again urges the Commission to deny SWBT's Application as prematurely filed.

In its earlier-filed opposition, ASCENT cautioned against grant of SWBT's Application on the grounds that (i) SWBT continued to impose unreasonable, and hence unlawful, restrictions on the resale of xDSL-based advanced services, thereby "severely hinder[ing] the ability of other carriers to compete,"³ and (ii) the carrier had failed to adequately address the concerns identified by the U.S. Department of Justice regarding its pricing of unbundled network elements in Missouri, and that as a result, SWBT continued to levy inflated charges for access to such elements. ASCENT also argued that the Commission should not, indeed, could not, grant SWBT additional in-region, interLATA authority until such time as it has concluded its investigation of the carrier's admitted submission of false and misleading information in support of its Kansas/Oklahoma application, and meted out appropriate sanctions.

Subsequent to the filing by SWBT of its Application, SBC Advanced Solutions, Inc. ("SBC ASI") filed a tariff imposing still further restrictions on SWBT's already unlawfully limited resale of xDSL-based advanced services. These additional unreasonable, and hence, unlawful, restrictions on the resale of SWBT's xDSL-based advanced services offerings, confirm ASCENT's showing of substantial noncompliance by the carrier with the resale component of the "competitive checklist."

² 47 U.S.C. § 271(c)(2)(B) .

³ Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Connecticut (Memorandum Opinion and Order), CC Docket No. 01-100, FCC 01-208, ¶ 32 (July 20, 2001) (*subsequent history omitted*).

1. SWBT Has Further Restricted the Resale of xDSL-based Advanced Services

In its Opposition to SWBT's Application, ASCENT demonstrated that SWBT had blatantly manipulated its xDSL-based advanced services offerings in a ham-handed attempt to thwart the Congressional mandate embodied in Section 251(c)(4) as it applies to advanced services.⁴

In so doing, ASCENT further showed, SWBT distorted not one, but two, of the Commission's pro-competitive initiatives, the first intended to insulate Internet service providers ("ISPs") from common carrier regulation, the second designed to encourage the provision of advanced services to ISPs by incumbent local exchange carriers ("LECs") at reduced rates. Applying these untenable interpretations, SWBT had limited its Section 251(c)(4) resale of xDSL-based advanced services to offerings made available to "business customers and to certain grandfathered residential customers."⁵ SWBT now seeks to further restrict the resale of the xDSL-based advanced services it offers to larger business customers.

On Friday, September 7, 2001 – nearly three weeks following the filing of SWBT's Application – SBC ASI filed its initial "Advanced Services Tariff" -- Tariff F.C.C. No. 1 -- to become effective the following Monday. SBC ASI's Advanced Services Tariff offers a variety of advanced services, including asynchronous transfer mode ("ATN"), frame relay, digital subscriber line ("DSL"), and network access point services, and sets for the terms and conditions of such offerings. The tariffed DSL offerings include services offered at wholesale and retail, the latter limited to "Remote LAN DSL Transport Service." For purposes of evaluating SWBT's compliance with the resale component of the competitive checklist, the tariffed DSL offerings are noteworthy not only for what they include, but for what they leave out, each addition and omission serving to

⁴ 47 U.S.C. § 251(c)(4).

⁵ Brief in Support at 50.

further restrict the Section 251(c)(4) resale of xDSL-based advanced services.

“Remote LAN DSL Transport Service” (“RLAN- DSL Transport”) is, as described by SWBT, “a service provided to businesses with a Local Area Network (“LAN”) which enables the business to allow access to its LAN directly.”⁶ Hence, RLAN-DSL Transport Service is clearly a service “designed for and sold to . . . business end-users,” and hence, a service “subject to the discounted resale obligations of section 251(c)(4).”⁷ Yet the SBC ASI Advanced Services Tariff unlawfully limits, indeed, arguably prohibits, the resale of RLAN-DSL Transport Service, imposes conditions designed to thwart resale of the service, and fails to provide for the carrier discounts required by Section 251(c)(4).

Section 7.1.1 of the SBC ASI Advanced Services Tariff declares that “RLAN-DSL Transport Service is for retail customers only for their own consumption and may not be used as a wholesale input used to provide another retail offering.” This limitation contrasts sharply with SBC ASI’s description of its “Wholesale Digital Subscriber Line (DSL) Transport Service.” This “wholesale” offering SBC ASI declares “may be purchased by any information Service provider or carrier to connect to their End User for the purposes of providing a retail Service.”⁸ In short, unlike

⁶ SBC ASI Advanced Services Tariff Section 7.1.1.

⁷ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Services (Second Report and Order), 14 FCC Rcd. 19237, ¶¶ 19 - 20 (1999) (*subsequent history omitted*).

⁸ SBC ASI Advanced Services Tariff Section 6.1.1.

its designated “wholesale” DSL offering, SBC ASI does not provide for the resale, much less for Section 251(c)(4) resale, of RLAN-DSL Transport Service.

Compounding this blatant violation of not only Section 251(c)(4), but Section 251(b)(1),⁹ SWBT seeks through its Advanced Services Tariff to limit in a manner expressly prohibited by the Commission any resale of RLAN-DSL Transport Service which may, despite its efforts to prohibit it, nonetheless arise. Section 7.2.2 of the SBC ASI Advanced Services Tariff limits the availability of RLAN-DSL Transport Service to “line sharing arrangement[s] (High Frequency Portion of the Line -- HFPL) over an SBC ILEC-provided (non-resold, non-UNE-Platform) retail POTS line.” Or couched somewhat differently, RLAN-DSL Transport Service is only available in conjunction with SWBT-provided voice service.

As the Commission has already held, “limiting resale of DSL services to situations where . . . [the incumbent] is the voice provider severely hinders the ability of other carriers to compete . . . [by] prevent[ing] competitive resellers from providing both DSL and voice services to their customer, while . . . [the incumbent] is able to offer both together to its customers.”¹⁰ Because such a result is “clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4),” the Commission has directed incumbent LECs to “permit resale of DSL by a competitive LEC over lines on which the competitive LEC provides voice service through resale of . . . [the

⁹ 47 U.S.C. ¶ 251(b)(3).

¹⁰ Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Connecticut (Memorandum Opinion and Order), CC Docket No. 01-100, FCC 01-208 at ¶ 32

incumbent's] service.¹¹ SWBT's restriction of any resale of RLAN-DSL Transport Service to lines on which it is the voice provider, hence, is unlawful.

As to omissions, the lawfulness of the SBC ASI Advanced Services Tariff is undermined by a highly consequential omission. Notably absent from the SBC ASI Advanced Services Tariff is a statutory discount applicable to RLAN-DSL Transport Service. Nor can SWBT rely on interconnection agreements, its template General Services Agreement ("GSA"), or customer service arrangements ("CSAs") to remedy this deficiency.

Initially, Section 2.11.2 of the SBC ASI Advanced Services Tariff converts all "existing contracts containing only month to month rates, terms and conditions" to "applicable month to month tariffed rates, terms and conditions," effective ninety days following September 10. While existing contracts containing extended terms are "grandfathered" for the duration of those terms, all future provision of RLAN-DSL Transport Service apparently will be undertaken pursuant to tariffed rates, terms and conditions, including those terms and conditions which limit or prohibit resale of the service.

¹¹ Id. at ¶¶ 32 - 33.

Opting into whatever grandfathered interconnection agreements or CSAs may continue to exist for some period of time does not resolve the issue either. Initially, SWBT declares that such agreements will be made available only to “similarly situated customer[s] that meet[] the terms and conditions of that particular arrangement.”¹² Such a limitation leaves open to doubt whether a resale carrier could opt-in to a CSA for a large business end-user for purposes of reselling the services provided thereunder, and if it could, whether the resale carrier would be able to aggregate the usage of its end-users to meet volume commitments as required by the Commission.¹³ Moreover, SWBT has included in the very CSA it relies on as evidence of its compliance with the resale component of the “competitive checklist” – *i.e.*, the “ASI-Logix Agreement” – various terms and conditions of service whose unreasonable nature renders reliance by resale carriers on the CSA difficult, if not impossible .

¹² Brief in Support at 53.

¹³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ ____ [15871] (1996) (*subsequent history omitted*).

For example, SWBT limits resale in the ASI-Logix Agreement to circumstances in which “there is existing capacity on SBC-ASI’s deployed facilities to provide the Services,” leaving available a ready path by which SWBT can avoid its Section 251(c)(4) obligations simply by limiting capacity levels to those necessary to serve SWBT retail customers.¹⁴ Another illustration of the unreasonable character of the ASI-Logix Agreement is the requirement that competitors use SBC ASI operations support systems (“OSS”) interfaces, as opposed to SWBT OSS interfaces, to order and maintain xDSL-based advanced services.¹⁵ Such a requirement, of course, increases costs and hinders effective operations for competitors. And yet another example is SWBT’s reservation to itself of the right to “at its own discretion, provision other applications on the same line that is carrying CLEC’s virtual session to the End User location.”¹⁶ Such a right constitutes a virtual unfettered license to interfere with the resale carrier’s customer relationships. Finally, the ASI-Logix Agreement imposes on resale carriers the same unlawful line-sharing limitation imposed by SWBT in the SBC ASI Advanced Services Tariff, as well as a prohibition on the sale of RLAN-DSL Transport Service to ISPs which is comparable to a restriction incorporated into the SBC ASI Advanced Services Tariff.¹⁷

Reliance upon SWBT’s proffered “General Services Agreement” is no less problematic for resale carriers. The GSA, as modified by the DSL Transport Service Addendum, contains many of the same unreasonable terms and conditions found in the SBC ASI Advanced Services Tariff and/or the ASI-Logix Agreement. For example, the GSA contains no statutory

¹⁴ See, e.g., Arkansas ASI-Logix Agreement at ¶ 11(H)).

¹⁵ See, e.g., *id.* at ¶ 27.

¹⁶ See, e.g., *id.* at ¶ 22(H).

discounts as required by Section 251(c)(4). The GSA also contemplates use by resale carriers of unique SBC ASI interfaces. And the GSA also grants SWBT unfettered license to provide “other applications” over the facilities connecting end-users to the DSL service.

¹⁷ See, e.g., id. at ¶¶ 22(B), 22(I).

As ASCENT noted in its earlier-filed opposition to the SWBT Application, Section 251(c)(4) of the Act both requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers,” and prohibits incumbent LECs from “impos[ing] unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service.” Accordingly, the Commission is precluded from granting an application for in-region, interLATA authority to any carrier which prohibits resale or imposes unreasonable or discriminatory conditions or limitations on resale. As initially filed, the SWBT failed to satisfy the resale component of the “competitive checklist.” The carrier’s subsequent filing of its Advanced Services Tariff only serves to confirm this noncompliance. Given that a carrier’s failure to “satisf[y] an individual checklist item of the competitive checklist constitute[s an] independent ground[] for denying . . . [an] application,” the unreasonable restrictions SWBT continues to impose on the resale of xDSL-based advanced services require the Commission to deny SWBT’s Application.¹⁸

2. Conclusion

By reason of the foregoing, the Association of Communications Enterprises once again urges the Commission to deny as premature the Joint Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for authority to originate interLATA traffic in the States of

¹⁸ Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599, ¶ 50 (1998) (*subsequent history omitted*); Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245, ¶ 63 fn. 225 (1998) (*subsequent history omitted*).

Arkansas and Missouri, and to require, as mandated by Section 271(d)(3) of the Act, full compliance with the competitive checklist before SWBT is granted such authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, on the individuals list on this 5th day of October, 2001:

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